

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*,

Defendants.

No. 2:23-cv-0932-JHC

DEFENDANTS' OPPOSITION TO
FTC'S MOTION TO EXTEND TRIAL
LENGTH

NOTED ON MOTION CALENDAR:
July 24, 2025

ORAL ARGUMENT REQUESTED

DEFENDANTS' OPPOSITION TO FTC'S
MOTION TO EXTEND TRIAL LENGTH
(2:23-cv-0932-JHC)

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I. INTRODUCTION

Defendants oppose Plaintiff Federal Trade Commission’s (“FTC”) motion to increase only the number of trial days allotted to the FTC. The parties have already requested that the Court extend the trial length to three weeks (7.5 trial days per side), Dkt. 391 at 2, from the originally-scheduled two weeks (5 trial days per side). Dkt. 66. The FTC now seeks to further extend the trial so that it may have 10 days *for itself*, while limiting Defendants to 7.5 days. *See* Dkt. 400 at 2-3. The Court should deny this request because the FTC has neither met its burden to establish “good cause” to lengthen the trial beyond three weeks, *id.* at 1 (quoting *Lacey Marketplace Assocs. II, LLC v. United Farmers of Alberta Co-op. Ltd.*, 2015 WL 403165 at *20 (W.D. Wash. Jan. 28, 2015)), nor articulated any legitimate basis for receiving more trial time than Defendants. The FTC has not even attempted to explain why three weeks—already a generous allocation relative to other ROSCA cases—is insufficient here, despite admitting that this case involves “straightforward” legal concepts and flows that are largely undisputed, *see* Dkt. 314 at 71, Dkt. 381 at 1. Most importantly, if the Court agrees to extend the length of trial, both sides should receive equal time as the FTC itself previously acknowledged and agreed. *See, e.g.*, Dkt. 391 at 2 (FTC’s position was that both sides should receive 10 days of trial time); *cf. Amarel v. Connell*, 102 F.3d 1494, 1513 (9th Cir. 1996), *as amended* (Jan. 15, 1997) (no abuse of discretion where district court gave each side an additional six hours of trial time upon plaintiff’s request for additional time).

II. BACKGROUND

A. The FTC Has Not Justified Its Request for Additional Trial Time.

As noted, the parties have already requested to increase trial from two weeks to three—which is already longer than most ROSCA cases. *See FTC v. Directv*, 15-cv-01129-HSG, Dkt. 421 (C.D. Cal.) (set for 10-day bench trial); *United States v. Adobe Inc.*, 5:24-cv-03630, Dkt. 63 (N.D. Cal.) (set for 10-day jury trial); *FTC v. Doxo, Inc. et al.*, 2:24-cv-00569, Dkt. 40 (W.D. Wash.) (set for 8-day jury trial); *FTC v. Bunzai Media Group*, CV 15-4527-GW(PLAX), Dkt. 670 (C.D. Cal.) (parties estimating 5-7 days for jury trial); *United States v. MyLife.com et*

1 *al.*, 2:20-CV-6692-JFW (PDX), Dkts. 45, 108 (C.D. Cal.) (parties initially estimated 10-15 days;
 2 later estimated 4 days); *FTC v. Cardiff et al.*, 18-2104-DMG (PLAX), Dkt. 101 (C.D. Cal.)
 3 (parties estimated 12 days for jury trial); *FTC v. Apex Capital Group et al.*, CV 18-
 4 9573(JFW)(JPRX), Dkt. 52 (C.D. Cal.) (set for 4-day jury trial). Indeed, Defendants have
 5 identified only one ROSCA case—involving 18 defendants with related but distinct business
 6 practices—that took longer than 15 trial days. *See FTC v. Hornbeam Special Situations, LLC*,
 7 1:17-CV-3094-TCB, Dkts. 489-492, 497-499, 500-509 (N.D. Ga.) (17-day trial bench trial held
 8 in 2024).

9 The FTC does not identify with any specificity why 7.5 days would be insufficient to
 10 present its case. *Cf. Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1200 (9th Cir. 2008) (no abuse of
 11 discretion limiting trial where Plaintiff “did not specify what evidence they would have
 12 presented if more time had been allotted”); *Monotype Corp. PLC v. Int’l Typeface Corp.*, 43 F.3d
 13 443, 451 (9th Cir. 1994) (rejecting party’s argument that it had insufficient trial time because “it
 14 did not argue how it was damaged by the time limits”). For instance, the FTC gives no indication
 15 as to the number or identity of the witnesses it expects to call or how long each witness would
 16 testify. Instead, the FTC only vaguely gestures to the “significant” “scale” of the case, the
 17 “complex legal and factual questions” at play, and “voluminous and complex” evidence, Dkt.
 18 400 at 2, without any detail as to how or why this purported scale or complexity necessitates
 19 additional trial time for the FTC alone. Moreover, the FTC’s current assertions are belied by
 20 their previous arguments that “the concepts of ‘clear and conspicuous’ disclosures, ‘express
 21 informed consent,’ and ‘simple’ cancellation mechanisms are all straightforward,” Dkt. 314 at
 22 71, and that Defendants’ alleged ROSCA violations could be proved based solely on “the content
 23 of the at-issue Prime enrollment pages or of the Iliad cancellation process,” Dkt. 381 at 1. And
 24 while the FTC downplays its extension request as “modest,” Dkt. 400 at 1, an increase in trial
 25
 26
 27

length from three weeks to four weeks—as would be necessary to maintain equal time for both sides—would impose significant additional burdens upon the Court, the parties, and the jury.¹

Under these circumstances, the FTC has failed to meet its burden of showing good cause to extend the length of trial beyond the already generous three weeks the parties jointly seek.

B. Alternatively, Both Sides Should Be Allocated Equal Time.

The Court should also deny the FTC’s request to the extent the FTC seeks more trial time than Defendants. Should the Court grant the FTC any additional trial time, Defendants should receive the same. Throughout the parties’ communications regarding trial length, Defendants have always made clear that the total time allocated for trial should be split equally between each side. *See, e.g.,* Ding Decl., Ex. 1 at 3, 5. And until the FTC filed the instant motion, it had consistently agreed. Indeed, in the parties’ joint submission just a few days earlier, the FTC’s position was that “[t]rial should be extended such that *each side has 10 trial days* to put on their cases.” Dkt. 391 at 2 (emphasis added).

Now, despite its prior representation that it would “move the Court to extend the trial to ten days *per side*,” *id.* (emphasis added), the FTC seeks to extend its own trial time to 10 days while limiting Defendants to 7.5 days. Dkt. 400 at 3. But the FTC makes no attempt to justify this inequitable division of time, nor could it—there is no reason the FTC should be entitled to more time to present its case than Defendants. *Cf. Amarel*, 102 F.3d at 1513 (no abuse of discretion where plaintiffs sought 10 more hours of trial time and district court gave each side an additional 6 hours); LCR 39.2(m) (each side allocated equal 3 hours under the Individualized Trial Program). Contrary to the FTC’s contention, Defendants have never suggested that “their case may benefit from [the] brevity” of just 7.5 days. Dkt. 400 at 2. Rather, Defendants’ consistent position has been that “a three-week trial of 7.5 court days *per side* is appropriate”

¹ It is also worth noting that the parties have filed dispositive motions and *Daubert* motions, and will file *motions in limine*, that may “substantially narrow[] the issues for trial.” *Lacey Marketplace Assocs. II*, 2015 WL 403165 at *20 (denying motion to extend trial length). Any further extension of trial would be more appropriately considered after resolution of at least the pending motions.

1 because “the parties should be efficient with their trial time and, of course, the parties should get
 2 equal time.” Ding Decl., Ex. 1 at 2; *see also* Dkt. 391 at 2 (stating Defendants’ position that
 3 “each side” should have 7.5 trial days to put on their cases). And the FTC has acknowledged that
 4 “Amazon and the three individual defendants are likely to need at least the same time [as the
 5 government] to present their[]” case. Ding Decl., Ex. 1 at 6. The FTC’s decision now to request
 6 additional time only for itself is a transparent ploy to portray its motion as lengthening trial by
 7 only 2.5 days, when in truth a full additional week of trial would be necessary to ensure equal
 8 time.

9 Finally, Amazon and three individual Defendants would be prejudiced by having less
 10 time to defend against the FTC’s allegations, and prove up their affirmative defenses, than the
 11 FTC has to present those allegations. The FTC’s proposed 2.5 trial days is a significant disparity:
 12 it is a 33% increase from the 7.5 days to which the FTC propose to limit four Defendants.

13 For these reasons, the Court should, at a minimum, ensure that both sides are allocated
 14 equal time at trial by granting Defendants the same extension, if any, that the Court grants the
 15 FTC.

16 III. CONCLUSION

17 For the foregoing reasons, the Court should deny the FTC’s request for 10 days of trial
 18 time and set trial in this case for 7.5 days per side. Alternatively, to the extent the Court grants
 19 the FTC’s request, Defendants should likewise be allocated 10 days.

20 DATED this 18th day of July, 2025.

21
 22 I certify that this memorandum contains 1,417 words, in compliance with the Local Civil
 23 Rules.

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